

**ASSEMBLY BILL**

**No. 1**

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**Introduced by Assembly Member Charles Calderon**

December 8, 2008

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An act relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as introduced, Charles Calderon. Taxation: corporate reorganizations: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of California law.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 1, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 1, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares the  
2 following:

3     (1) The Personal Income Tax Law (Part 10 (commencing with  
4 Section 17001) of Division 2 of the Revenue and Taxation Code)  
5 and the Corporation Tax Law (Part 11 (commencing with Section  
6 23001) of Division 2 of the Revenue and Taxation Code) provide  
7 for specified conformity to various referenced provisions of the  
8 federal Internal Revenue Code, as enacted as of a specified date.

9     (2) Those laws provide that for taxable years beginning on or  
10 after January 1, 2005, the conformity date specified in California  
11 law for those referenced Internal Revenue Code sections is January  
12 1, 2005, except as otherwise specifically provided.

13     (3) Included among the federal provisions conformed to as  
14 enacted as of January 1, 2005, are the provisions of Section 382  
15 of the Internal Revenue Code, relating to limitations on net  
16 operating loss carryforwards and certain built-in losses following  
17 ownership change.

18     (4) As enacted as of January 1, 2005, Section 382 of the Internal  
19 Revenue Code applied to financial institutions, and Section 382  
20 included no specific authority for regulatory actions by the Internal  
21 Revenue Service or the Department of the Treasury to exempt  
22 banks or other financial institutions from its provisions.

23     (5) On October 20, 2008, the Internal Revenue Service issued  
24 Notice 2008-83, 2008-42 I.R.B. 905, stating that “[f]or purposes  
25 of section 382(h), any deduction properly allowed after an  
26 ownership change (as defined in section 382(g)) to a bank with  
27 respect to losses on loans or bad debts (including any deduction  
28 for a reasonable addition to a reserve for bad debts) shall not be  
29 treated as a built-in loss or a deduction that is attributable to periods  
30 before the change date.”

31     (6) Notice 2008-83, which precludes the application of  
32 provisions of Section 382 of the Internal Revenue Code to financial  
33 institutions, constitutes a substantive change to the application of  
34 Section 382 of the Internal Revenue Code, as enacted as of January  
35 1, 2005.

36     (7) This state conformed to Section 382 of the Internal Revenue  
37 Code, as enacted as of January 1, 2005, but the Legislature’s action  
38 in conforming to Section 382 of the Internal Revenue Code did

1 not contemplate the substantive change in application of these  
2 provisions set forth in Notice 2008-83.

3 (b) Inasmuch as the Legislature has determined that the changes  
4 set forth in Notice 2008-83 are inconsistent with, and in conflict  
5 with, the intent of the Legislature in conforming with Section 382  
6 of the Internal Revenue Code, the Legislature makes the following  
7 finding and directs the Franchise Tax Board to apply it for purposes  
8 of the Personal Income Tax Law and the Corporation Tax Law:

9 (1) Notice 2008-83, relating to application of Section 382(h) of  
10 the Internal Revenue Code to banks, and any other administrative  
11 guidance issued by the Internal Revenue Service after October 20,  
12 2008, and any federal Treasury regulations promulgated after  
13 October 20, 2008, which have the same or similar effect regarding  
14 the application of Section 382 of the Internal Revenue Code to  
15 banks, shall not apply for purposes of the Personal Income Tax  
16 Law and the Corporation Tax Law.

17 (2) Paragraph (1) shall apply to the same taxable periods to  
18 which any federal guidance described in Notice 2008-83 is  
19 applicable.

20 SEC. 2. This act addresses the fiscal emergency declared by  
21 the Governor by proclamation on December 1, 2008, pursuant to  
22 subdivision (f) of Section 10 of Article IV of the California  
23 Constitution.

24 SEC. 3. This act is an urgency statute necessary for the  
25 immediate preservation of the public peace, health, or safety within  
26 the meaning of Article IV of the Constitution and shall go into  
27 immediate effect. The facts constituting the necessity are:

28 In order to provide clarity of revenue estimates for purposes of  
29 addressing the current state fiscal crisis, it is necessary that this  
30 act go into immediate effect.

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